

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JANE DOE,)
Plaintiff,)
v.) Civil Action No. 2:20 CV 05142
NORTH PENN SCHOOL DISTRICT,)
Defendant.)

ORDER

AND NOW, this day of , 2021, upon consideration of Plaintiff's Motion to Compel Depositions, it is hereby **ORDERED** that said Motion is **GRANTED**. It is **ORDERED** that Curtis Dietrich, Kathryn Small, Holly Andrew, Todd Bauer, Cheryl McCue, William Bowen, and Pete Nicholson will be produced for deposition within ten (10) days.

Date

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLAINTIFF'S MOTION TO COMPEL DEPOSITIONS

1. This action stems from Defendant's deliberate indifference to reports of repeated sexual assault and harassment of Plaintiff by fellow student M.P.
2. Plaintiff filed her Complaint on October 15, 2020.
3. A Case Management Conference was held on February 12, 2021, which set a Discovery End Date of August 12, 2021 and a Settlement Conference for August 19, 2021.
4. The parties exchanged Initial Disclosures and on March 16, 2021, Defendant North Penn School District produced over 1,000 pages of documents as the incidents in Plaintiff's Complaint span approximately six (6) years.
5. Plaintiff served Interrogatories and Request for Production of Documents on Defendant on March 11, 2021.
6. On May 14, 2021, Plaintiff sent a ten (10) day letter to Defendant following up on its response to Plaintiff's Discovery Requests.
7. Defendant responded to Plaintiff's Interrogatories and Request for Production of Documents on May 19, 2021.

8. On May 20, 2021, Plaintiff requested that Defendant provide dates for the depositions of Curtis Dietrich (School District Superintendent), Kathryn Small (Supervisor of Special Education) , Holly Andrew (teaching assistant who witnessed 6th grade assault), Todd Bauer (District Assistant Superintendent) and Cheryl McCue (North Penn School District Title IX Coordinator). A copy of this email exchange is attached as Exhibit “A.”

9. On June 2, 2021, Plaintiff sent an email to Defendant to follow up on the previously requested deposition dates and also asked for dates for the depositions of William Bowen (Principal of Gwynedd Square Elementary School), Pete Nicholson (Principal of North Penn High School), and Kira O’Brien (school guidance counselor). *See Exhibit A.*

10. On June 17, 2021, Plaintiff emailed Defendant that our office has still not received deposition dates for any of the requested witnesses. A copy of this email exchange is attached as Exhibit “B.”

11. On June 17, 2021, counsel for Defendant said she would provide deposition dates once she returns from vacation. *See Exhibit “B.”*

12. On June 23, 2021, counsel for Defendant proposed August 9th – 12th for the requested witnesses because Defendant’s counsel would be on vacation out of state from July 9-22, 2021. *See Exhibit “B.”*

13. On June 23, 2021, Plaintiff advised that she would not wait until August 9th – 12th to schedule depositions since the Discovery End Date was August 12, 2021 and Plaintiff had been requesting dates since May. Plaintiff also advised that this was the first Defendant mentioned that half the month of July was unacceptable for scheduling or Plaintiff would have filed her Motion to Compel earlier. *See Exhibit “B.”*

14. On June 23, 2021, Defendant stated it would try to get dates for July and asked for any conflicts in July for Plaintiff. Plaintiff responded by saying that Plaintiff is available any day except July 5, July 8, and July 22, 2021. *See Exhibit "B."*

15. On June 24, 2021, Defendant offered July 26 and July 28, 2021 to complete six (6) depositions, three (3) on each day and stated that North Penn Principal Bowen was only available in the dates previously offered in August. Defendant also advised that witness Kira O'Brien worked for North Montco Technical School and Defendant was unable to produce her for deposition.

16. Plaintiff asked Defendant for additional dates in July as it would not be reasonable to expect three (3) depositions to be completed in one day, especially with the amount of information there is to cover with these witnesses. *See Exhibit "C."*

17. Defendant responded that there are no additional dates that will be offered in July.

18. The discovery deadline in this case is August 12, 2021.

19. The requested depositions are necessary for purposes of discovery as well as the efficient management of litigation because they are witnesses in this matter and possess relevant information.

20. Plaintiff will be severely prejudiced in this prosecution of her claims if the requested witnesses are not produced for deposition.

21. Plaintiff was attempting to work with Defendant to allow Defendant to produce dates for the witness depositions, but starting deposition discovery the final three (3) days of factual discovery is not acceptable. That schedule does not allow Plaintiff any opportunity to schedule follow up depositions or additional document requests if witnesses identify new witnesses or documents that had not previously been produced.

22. Therefore, Plaintiff respectfully requests that this Honorable Court enter an Order requiring Defendant's witnesses to appear for deposition within ten (10) days of the date of the Court's Order.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion to Compel and enter the attached Order.

Date: June 25, 2021

By: s/ Laura E. Laughlin
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NORTH PENN SCHOOL DISTRICT,)
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Defendant.)
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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION TO COMPEL DEPOSITIONS**

I. MATTER BEFORE THE COURT

Plaintiff's Motion to Compel Depositions of Defendant's Witnesses.

II. QUESTION PRESENTED

Q. Should Plaintiff's Motion to Compel be granted where Defendant's proposed deposition dates are almost three (3) months after Plaintiff's request and the dates offered are the final four (4) days of factual discovery?

A. *Suggested Answer: Yes*

III. STATEMENT OF FACTS

This action stems from Defendant's deliberate indifference to reports of repeated sexual assault and harassment of Plaintiff by fellow student M.P. Plaintiff filed her complaint on October 15, 2020. A Case Management Conference was held on February 12, 2021, which set a Discovery End Date of August 12, 2021 and a Settlement Conference for August 19, 2021.

The parties exchanged Initial Disclosures and on March 16, 2021, Defendant North Penn School District produced over 1,000 pages of documents as the incidents in Plaintiff's Complaint

span approximately six (6) years. Plaintiff served Interrogatories and Request for Production of Documents on Defendant on March 11, 2021. On May 14, 2021, Plaintiff sent a ten (10) day letter to Defendant following up on its response to Plaintiff's Discovery Requests. Defendant responded to Plaintiff's Interrogatories and Request for Production of Documents on May 19, 2021.

On May 20, 2021, Plaintiff requested that Defendant provide dates for the depositions of Curtis Dietrich (School District Superintendent), Kathryn Small (Supervisor of Special Education), Holly Andrew (teaching assistant who witnessed 6th grade assault), Todd Bauer (District Assistant Superintendent) and Cheryl McCue (North Penn School District Title IX Coordinator). A copy of this email exchange is attached as Exhibit "A."

On June 2, 2021, Plaintiff sent an email to Defendant to follow up on the previously requested deposition dates and also asked for dates for the depositions of William Bowen (Principal of Gwynedd Square Elementary School), Pete Nicholson (Principal of North Penn High School), and Kira O'Brien (school guidance counselor). *See Exhibit A.* On June 17, 2021, Plaintiff emailed Defendant that our office has still not received deposition dates for any of the requested witnesses. A copy of this email exchange is attached as Exhibit "B." On June 17, 2021, Defendant said it would provide deposition dates once Defendant's counsel returned from vacation. *See Exhibit "B."*

On June 23, 2021, counsel for Defendant proposed August 9th – 12th for the requested witnesses because Defendant's counsel would be on vacation out of state from July 9-22, 2021. *See Exhibit "B."* On June 23, 2021, Plaintiff advised that she could not wait until August 9th – 12th to schedule depositions since the Discovery End Date was August 12, 2021 and Plaintiff had been requesting dates since May. Plaintiff also advised that this was the first Defendant

mentioned that half the month of July was unacceptable for scheduling or Plaintiff would have filed her Motion to Compel earlier. *See Exhibit “B.”*

On June 23, 2021, Defendant stated it would try to get dates for July and asked for any conflicts in July for Plaintiff. Plaintiff responded by saying that Plaintiff is available any day except July 5, July 8, and July 22, 2021. *See Exhibit “B.”* On June 24, 2021, Defendant offered July 26 and July 28, 2021 to complete six (6) depositions, three (3) on each day and stated that North Penn Principal Bowen was only available in the dates previously offered in August. Defendant also advised that witness Kira O’Brien worked for North Montco Technical School and Defendant was unable to produce her for deposition.

Plaintiff asked Defendant for additional dates in July as it would not be reasonable to expect three (3) depositions to be completed in one day, especially with the amount of information there is to cover with these witnesses. *See Exhibit “C.”* Defendant responded that there are no additional dates that will be offered in July. Plaintiff then filed this Motion to Compel Depositions.

IV. LEGAL ARGUMENT

Federal Rule of Civil Procedure 30(b)(1) provides that a party seeking to take the deposition of any person shall give reasonable notice in writing to every other party to the action. Despite such reasonable notice, counsel for Defendant has not provided deposition dates for the requested witnesses in a timely manner.

The requested depositions are necessary for purposes of discovery as well as the efficient management of litigation because they are witnesses in this matter and possess relevant information. Plaintiff was sexually assaulted both in Gwynedd Elementary School and North

Penn High School and the witnesses Plaintiff has requested for deposition were involved in each of the assaults and the District's deliberately indifferent response to its actual knowledge of the assaults. Defendant's deliberate indifference and its failure to train and have appropriate policies and procedures violated Plaintiff's rights to an education and caused her to be home schooled and derailed her educational path.

The discovery deadline in this case is August 12, 2021. Plaintiff will be severely prejudiced in this prosecution of her claims if the requested witnesses are not produced for deposition in a timely manner.

Plaintiff was attempting to avoid motion practice to allow Defendant to produce dates for the witness depositions, but starting deposition discovery the final four (4) days of factual discovery is not acceptable. That schedule does not allow Plaintiff any opportunity to schedule follow up depositions or additional document requests if witnesses identify new witnesses or documents that had not previously been produced. Plaintiff will be severely prejudiced in this prosecution of her claims if the requested witnesses are not produced for deposition in a timely manner, which would allow Plaintiff to complete additional discovery as needed following the requested depositions. Therefore, Plaintiff respectfully requests that this Honorable Court enter an Order requiring Defendant's witnesses to appear for deposition within ten (10) days of the date of the Court's Order.

V. CONCLUSION

For the above reasons, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion to Compel and enter the attached Order.

Date: June 25, 2021

By: s/ Laura E. Laughlin

Laura E. Laughlin (311896)

FREIWALD LAW, P.C.

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v.) Civil Action No. 2:20 CV 05142
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NORTH PENN SCHOOL DISTRICT,)
)
Defendant.)
)

CERTIFICATE OF SERVICE

I, Laura E. Laughlin, Esquire hereby certify that a true and correct copy of the Motion to Compel was electronically filed today and served on all counsel of record.

By: s/ Laura E. Laughlin
Laura E. Laughlin (311896)
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lel@freiwaldlaw.com

Celeste Dougherty

From: Laura E. Laughlin
Sent: June 2, 2021 4:59 PM
To: Maureen Jordan
Cc: AKIMMEL@publicjustice.net; Alexandra Brodsky; Celeste Dougherty; Margaret Damitz
Subject: RE: Doe, Jane v. North Penn School District - Case No.: 2:20-cv-05142

Hi Maureen,

I'm following up on my email below regarding the additional documents requested as well as dates for depositions of the witnesses I requested. In addition to the witnesses listed below, I'd also like to take the depositions of William Bowen (Gwynedd's principal), Pete Nicholson (North Penn High School's principal) and Kira O'Brien (guidance counselor). Please provide me with dates for these depositions as well.

Thank you,
Laura



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From: Laura E. Laughlin <lel@freiwaldlaw.com>
Sent: Thursday, May 20, 2021 1:30 PM
To: Margaret Damitz <margaret.damitz@zurichna.com>; Maureen Jordan <maureen.jordan@zurichna.com>
Cc: AKIMMEL@publicjustice.net; Celeste Dougherty <CD@freiwaldlaw.com>
Subject: RE: Doe, Jane v. North Penn School District - Case No.: 2:20-cv-05142

Thank you.

Maureen,

EXHIBIT A

I will be issuing the subpoenas tomorrow for the records of MP. Will you accept service of them or do I have to serve them on the District? I also wanted to follow up on a few things. In the District's Initial Disclosure, Bates Number 540 is illegible. Do you have a clear copy of that page? Bates number 1031 is also cut off in the upper left hand corner. Do you have the full page?

In Jane Doe's education records, there are no therapy records from the guidance counselors at the District schools. Do you have those or is there somewhere separate I need to issue a subpoena to?

Lastly, I'd like to take the depositions of Curtis Dietrich, Kathryn Small, Holly Andrew, Todd Bauer, and Cheryl McCue. Can you please provide me with dates they are available?

Thank you,
Laura



Laura E. Laughlin | Attorney

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From: Maureen Jordan <maureen.jordan@zurichna.com>
Sent: Wednesday, June 23, 2021 4:44 PM
To: Laura E. Laughlin <lel@freiwaldlaw.com>
Subject: RE: Doe v. North Penn School District

Laura,

I will see if there are dates in July that my clients and I are both available and will get back to you. Are you available every day in July? If not, it would be helpful to know your conflicts. I will inquire as to whether Kira O'Brien kept records regarding Ms. Doe. If she did, obviously they will be provided.

Thanks,

Maureen

From: Laura E. Laughlin <lel@freiwaldlaw.com>
Sent: Wednesday, June 23, 2021 4:35 PM

To: Maureen Jordan <maureen.jordan@zurichna.com>
Subject: [EXTERNAL] Re: Doe v. North Penn School District

Maureen,

I cannot wait to schedule depositions until August. I am frustrated that this is the first time you've advised you're unavailable most of the month of July when I've been asking for dates since May. Please provide dates in July or I'll have to file a Motion to Compel by week's end.

Also, Ms Doe sought counseling with the school's counselor at North Penn High School. I believe her name was Kira O'Brien. Do the District's counselor's not keep records of students who meet with them for counseling and assistance?

On Jun 23, 2021, at 4:15 PM, Maureen Jordan <maureen.jordan@zurichna.com> wrote:

Laura,

I am currently waiting for the file(s) for B.P. I have been advised I will receive same before the end of the week. I in turn will forward on to you immediately upon receipt.

I was advised that the School District has no therapy records regarding your client. Copies of her files in the School District's possession were provided. If she received counseling/therapy from a specific entity, I would contact them for the records. If such records are received, I would appreciate receiving copies of same. July is very tight for me to schedule the depositions since I am on vacation out of state July 9-22.

My client gave me dates of August 9, 10, 11 and 12, all of which are within the deadline.

Please advise whether these dates are acceptable.

Thanks,

Maureen

From: Laura E. Laughlin <lel@freiwaldlaw.com>
Sent: Monday, June 21, 2021 12:18 PM
To: Maureen Jordan <maureen.jordan@zurichna.com>
Cc: Adele Kimmel <AKIMMEL@publicjustice.net>; Alexandra Brodsky <abrodsky@publicjustice.net>; Celeste Dougherty <CD@freiwaldlaw.com>
Subject: [EXTERNAL] RE: Doe v. North Penn School District

Maureen,

I'm ok with receiving everything by the end of this week with the caveat that North Penn won't change its position with providing the file for PB. I don't want to be punished if there were a late objection filed

for allowing you additional time due to a vacation. Also, all of the witnesses need to be scheduled for deposition in July since we have a discovery end date of August 12. I don't want to push back any deadline since we have a settlement conference August 19. With this understanding, I will agree to not file a Motion to Compel this week. I also have not heard back about Ms. Doe's therapy records from the school district counselors. Please advise on that as well.

Thank you,
Laura

Laura E. Laughlin | Attorney

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From: Maureen Jordan <maureen.jordan@zurichna.com>

Sent: Thursday, June 17, 2021 11:46 PM

To: Laura E. Laughlin <lel@freiwaldlaw.com>

Cc: Adele Kimmel <AKIMMEL@publicjustice.net>; Alexandra Brodsky <abrodsky@publicjustice.net>;

Celeste Dougherty <CD@freiwaldlaw.com>

Subject: RE: Doe v. North Penn School District

Hi Lauren,

I am leaving tomorrow morning at 7:00 a.m. for a family wedding in CA and will not be back in the office until Wednesday. I would appreciate until the end of next week to get you the requested docs and firm deposition dates.

Your anticipated professional courtesy regarding this request is much appreciated.

Thanks,

Maureen

From: Laura E. Laughlin <lel@freiwaldlaw.com>
Sent: Thursday, June 17, 2021 10:56 AM
To: Maureen Jordan <maureen.jordan@zurichna.com>
Cc: Adele Kimmel <AKIMMEL@publicjustice.net>; Alexandra Brodsky <abrodsky@publicjustice.net>;
Celeste Dougherty <CD@freiwaldlaw.com>
Subject: [EXTERNAL] RE: Doe v. North Penn School District

Hi Maureen,

Yesterday the District's response to Plaintiff's subpoena for PB's records was due. I have not seen any objection or intervention by PB or his parents. Please produce the records. I also have not received any deposition dates as requested. Since the discovery end date is August 12, I'll have to file a motion to compel the depositions if I don't receive dates by early next week. Please advise.

Thank you,

Laura

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From: Maureen Jordan <maureen.jordan@zurichna.com>
Sent: Thursday, June 24, 2021 3:05 PM
To: Laura E. Laughlin <lel@freiwaldlaw.com>
Subject: RE: Doe v. Penn School District

Laura,

No, sorry, no other dates. I had to rearrange other appointments I had to accommodate giving you those 2 dates in July. If you need additional dates, we will have to use the ones in August previously provided. I suggest we do 3 and 3 and then Ms. O'Brien (who you will have to subpoena) with Mr. Nicholson on an August date since he is not available. All dates given are within the discovery deadline.

Thanks,
Maureen

EXHIBIT C

From: Laura E. Laughlin <lel@freiwaldlaw.com>
Sent: Thursday, June 24, 2021 2:48 PM
To: Maureen Jordan <maureen.jordan@zurichna.com>
Subject: [EXTERNAL] RE: Doe v. Penn School District

Maureen,

Aren't there any additional dates in July? I can do those two dates, although on the 28th I have to be done by 3pm. There are 6 witnesses I've requested other than Pete Nicholson and Ms. O'Brien and I can't do three depositions in one day.

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From: Maureen Jordan <maureen.jordan@zurichna.com>
Sent: Thursday, June 24, 2021 2:02 PM
To: Laura E. Laughlin <lel@freiwaldlaw.com>
Subject: Doe v. Penn School District

Laura,

Everyone except for Pete Nicholson are available on July 26th or 28th. He will have to be scheduled on one of the dates I gave you in August.

Ms. O'Brien is not an employee of the School District. She is an employee of North Montco Technical Career Center (NMTCC), which is a separate educational legal entity. You will have to obtain the records from NMTCC directly.

Thanks,



MAUREEN A. JORDAN, ESQUIRE

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